

Notice of Allowability

Application No.

10/712,896

Examiner

Keith O. Robinson, Ph.D.

Applicant(s)

LINScombe, STEVEN D.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendments filed February 14, 2006.
2. ☒ The allowed claim(s) is/are 1-9,23,24,27 and 28, re-numbered 1-13, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 20060712.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with John Runnels on July 18, 2006.

IN THE CLAIMS:

Claim 5 has been amended to read: 5. (CURRENTLY AMENDED) A rice plant, or a part thereof, wherein said plant or part thereof has [having] all the physiological and morphological characteristics of the rice plant of Claim 2 [or a part of such a rice plant].

Claim 6 has been amended to read: 6. (CURRENTLY AMENDED) A tissue [Tissue] culture of regenerable cells from the rice plant of Claim 2.

Claim 7 has been amended to read: 7. (CURRENTLY AMENDED) The tissue [Tissue] culture of Claim 6, wherein the cells of the tissue culture are from a tissue selected from the group consisting of embryos, meristematic cells, pollen, leaves, anthers, roots, root tips, flowers, seeds, and stems.

Claim 8 has been amended to read: 8. (CURRENTLY AMENDED) A rice plant regenerated from the tissue culture of Claim 7, wherein said rice plant has [having] all of the morphological and physiological characteristics of 'Cheniere', wherein a

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representative sample of seed of which has been deposited under ATCC Accession No. PTA-5613.

SUBSTANCE OF THE INTERVIEW

2. The Examiner spoke with Applicant's representative, John Runnels, with regards to the above claim amendments in order to place the application in condition for allowance. Mr. Runnels agreed to the above amendments.

REASONS FOR ALLOWANCE

3. The following is an examiner's statement of reasons for allowance: Applicant's amendments, filed February 14, 2006 in addition to the claim amendments cited above have placed the application in condition for allowance. In addition, claims 1-9, 23, 24, 27 and 28 are deemed free of the prior art, given the failure of the prior art to teach or reasonably suggest a rice plant with the complete genetic complement and morphological trait collection exhibited by rice plant 'Cheniere'. The closest prior art, Moldenhauer (U.S. Patent No. 6,281,416, August 28, 2001) teaches a rice plant, 'Wells', having characteristics similar to that of the claimed invention, rice plant 'Cheniere' such as culms with erect angle and moderately strong strength, flag leaf with glabrous pubescence, erect leaf angle, and green blade and basal leaf sheath color, ligule with white color, panicle with 23 cm length, intermediate type, droopy axis, low shattering and easy threshability, grain with absent awns, purple apiculus, white stigma color, glabrous lemma and palea pubescence and highly fertile spikelet sterility, grain with light brown seed coat color, nonwaxy endosperm, clear endosperm translucency and

nonscented scent, medium germination and seedling vigor and flowering (see column 7, line 15 to column 8, line 58).

The rice plant of the prior art differs from the rice plant of the instant invention in having different maturity, culm internode color, height class, ligule shape, endosperm chalkiness and disease resistance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

4. Claims 1-9, 23, 24, 27 and 28 are allowed.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith O. Robinson, Ph.D. whose telephone number is 571-272-2918. The examiner can normally be reached on Monday - Friday 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Keith O. Robinson, Ph.D.

July 18, 2006

DAVID T. FOX
PRIMARY EXAMINER
GROUP 180-1638

A handwritten signature in black ink, appearing to read 'David T. Fox', written in a cursive style.